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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 MARCY M.,

10 Plaintiff,

Case No. C18-576-MLP

11 v.

ORDER

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
16 and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred
17 in (1) finding at step three that she does not meet a listing, (2) discounting her subjective
18 testimony, and (3) assessing certain medical opinions. (Dkt. # 14 at 2.) As discussed below, the
19 Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with prejudice.

20 **II. BACKGROUND**

21 Plaintiff was born in 1964, graduated from high school and has some college education,
22 and has worked as a bartender, cashier, shipping/receiving clerk, grocery store stocker, deli
23 worker, fruit sorter, prep cook, and cleaner. AR at 52, 207, 768-73. At the time of the most

1 recent administrative hearing, Plaintiff had last been gainfully employed sometime in 2016. *Id.* at
2 768-69.

3 In June 2008, Plaintiff protectively applied for benefits, alleging disability as of June 1,
4 2007. *Id.* at 68-69, 194-98. Plaintiff's applications were denied initially and on reconsideration,
5 and Plaintiff requested a hearing. *Id.* at 72-75, 79-85. After the ALJ conducted a hearing on
6 November 18, 2010 (*id.* at 30-67), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at
7 15-25.

8 The Appeals Council denied Plaintiff's request for review (*id.* at 1-6), and the United
9 States District Court for the Eastern District of Washington granted the parties' stipulation to
10 reverse the ALJ's decision and remand the case for further proceedings. *Id.* at 400-04. Plaintiff
11 filed subsequent applications for benefits in 2011, which were denied initially and upon
12 reconsideration, and, after a hearing (*id.* at 1006-26), the ALJ issued a decision dated February 7,
13 2013, finding Plaintiff not disabled. *Id.* at 411, 527; Supplemental AR (dkt. # 24) at 12-23, 136-
14 51, 154-67, 230-39. The Appeals Council consolidated the 2008 and 2011 applications, and
15 remanded the matter for further proceedings on the consolidated claims. AR at 411, 527, 838-39.

16 An ALJ held another hearing, on October 14, 2014 (*id.* at 1027-51), and issued another
17 decision denying Plaintiff's claims. *Id.* at 806-19. Plaintiff sought judicial review, and the United
18 States District Court for the Eastern District of Washington granted the parties' stipulation to
19 reverse the ALJ's decision and remand the case for further proceedings. *Id.* at 825-29. The
20 Appeals Council remanded this matter to an ALJ, in accordance with the court order. *Id.* at 847-
21 49. An ALJ held another hearing on September 27, 2017 (*id.* at 752-802), and subsequently
22 issued a decision again finding Plaintiff not disabled. *Id.* at 710-29.

Utilizing the five-step disability evaluation process,¹ the ALJ found:

Step one: Plaintiff worked since her alleged onset date, but that work did not rise to the level of substantial gainful activity.

Step two: Plaintiff's degenerative disk disease, status post ganglion cyst on the right knee, affective disorder, bilateral carpal tunnel syndrome status post release surgery on the right, borderline intellectual functioning, anxiety disorder, and substance addiction disorder are severe impairments.

Step three: These impairments do not meet or equal the requirements of a listed impairment.²

Residual Functional Capacity ("RFC"): Plaintiff can perform light work, with additional limitations: she can lift and/or carry 20 pounds occasionally and 10 pounds frequently. She can sit, stand, and walk six hours each in an eight-hour workday. She can frequently perform postural movements, except only occasionally climb ladders, ropes, and scaffolds, and occasionally stoop, kneel, crouch, and crawl. She must avoid concentrated exposure to vibrations, and hazards such as heights and dangerous moving machinery. She can occasionally push/pull for operation of foot pedals bilaterally with the lower extremities. She has sufficient concentration, persistence, and pace to sustain simple, routine tasks in two-hour increments with the usual and customary breaks in an eight-hour workday. She can adapt to simple workplace changes as may be required for simple, routine task work. She can perform work activity that does not require more than General Educational Development level of two in reasoning, math, and language.

Step four: Plaintiff can perform past relevant work as an agricultural produce sorter, and therefore she is not disabled.

Step five: In the alternative, because there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, she is not disabled.

Id.

Plaintiff appealed the ALJ's decision of the Commissioner to this Court.

III. LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on legal error or not supported by substantial

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
2 general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the
3 ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
4 (cited sources omitted). The Court looks to “the record as a whole to determine whether the error
5 alters the outcome of the case.” *Id.*

6 “Substantial evidence” is more than a scintilla, less than a preponderance, and is such
7 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
8 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
9 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
10 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
11 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
12 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
13 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
14 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

15 IV. DISCUSSION

16 A. The ALJ Did Not Err in Finding that Plaintiff Did Not Meet a Listing

17 Plaintiff argues that because the evidence shows that she meets the requirements of
18 Listing 12.02, the ALJ’s failure to explicitly discuss this listing was harmful. (Dkt. # 14 at 6-9.)

19 1. Legal Standards

20 At step three, the ALJ considers whether one or more of a claimant’s impairments meet
21 or medically equal an impairment listed in Appendix 1 to Subpart P of the regulations. “The
22 listings define impairments that would prevent an adult, regardless of his age, education, or work
23

1 experience, from performing *any* gainful activity, not just ‘substantial gainful activity.’” *Sullivan*
2 *v. Zebley*, 493 U.S. 521, 532 (1990) (emphasis in original; citations omitted).

3 Plaintiff bears the burden of proof at step three. *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5
4 (1987). A mere diagnosis does not suffice to establish disability. *Key v. Heckler*, 754 F.2d 1545,
5 1549-50 (9th Cir. 1985). “[An impairment] must also have the *findings* shown in the Listing of
6 that impairment.” *Id.* at 1549-50 (quoting § 404.1525(d); emphasis added in *Key*). To meet a
7 listing, an impairment “must meet *all* of the specified medical criteria.” *Sullivan*, 493 U.S. at 530
8 (emphasis in original).

9 2. *Listing 12.02*

10 Plaintiff argues that she meets Listing 12.02 because she satisfies paragraphs A and B,
11 which require:

12 A. Medical documentation of a significant cognitive decline from a prior
13 level of functioning in *one* or more of the cognitive areas:

- 14 1. Complex attention;
- 15 2. Executive function;
- 16 3. Learning and memory;
- 17 4. Language;
- 18 5. Perceptual-motor; or
- 19 6. Social cognition.

20 AND

21 B. Extreme limitation of one, or marked limitation of two, of the following
22 areas of mental functioning:

- 23 1. Understand, remember, or apply information.
2. Interact with others.
3. Concentrate, persist, or maintain pace.
4. Adapt or manage oneself.

21 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.02 (internal citations omitted). Plaintiff argues that the
22 ALJ erred in failing to explicitly consider Listing 12.02, and in failing to find that she met it. As
23 explained in the following subsections, the Court rejects both of Plaintiff’s contentions.

1 i. Consideration of Listing 12.02

2 Plaintiff argues that the ALJ erred in failing to consider Listing 12.02. (Dkt. # 14 at 6.)
3 She is mistaken: the ALJ explicitly found that Plaintiff did not meet any of the 12.00 listings,
4 which includes Listing 12.02. AR at 714. Although the ALJ did not list every single 12.00 listing
5 that Plaintiff did not satisfy, Plaintiff cites no requirement that the ALJ do so and the Court is not
6 aware of any.

7 ii. Paragraph B

8 The ALJ explicitly found that Plaintiff does not satisfy the Paragraph B criteria, rating
9 her deficits in all of the four categories as mild. AR at 714-15. Plaintiff cites various medical
10 opinions that she contends indicate that her functioning in the first and third categories
11 (understanding, remembering, or applying information, and concentrating, persisting, and
12 maintaining pace) was instead markedly impaired. (Dkt. # 14 at 8-9 (citing AR at 287, 295, 540,
13 1094, 1113).) None of the evidence explicitly rates Plaintiff's functioning as markedly impaired
14 in the Paragraph B categories, however. AR at 287, 295, 540, 1094, 1113. Moreover, the ALJ
15 discounted all of the evidence Plaintiff cites. *Id.* at 725-26. Thus, although Plaintiff interprets the
16 evidence in a way that satisfies the Paragraph B criteria, she has not shown that the ALJ's
17 interpretation of the evidence is unreasonable. *See Morgan v. Comm'r of Social Sec. Admin.*, 169
18 F.3d 595, 599 (9th Cir. 1999) ("Where the evidence is susceptible to more than one rational
19 interpretation, it is the ALJ's conclusion that must be upheld.").

20 Because Plaintiff has not established that the ALJ erred in finding that she does not
21 satisfy Paragraph B of Listing 12.02, the Court need not address Paragraph A because Plaintiff
22 cannot meet Listing 12.02 without satisfying Paragraph B. Plaintiff has not met her burden to
23 establish the existence of an error at step three in the ALJ's decision.

1 **B. Any Error in the ALJ’s Assessment of Plaintiff’s Testimony is Harmless**

2 The ALJ discounted Plaintiff’s testimony for a number of reasons: (1) the objective
3 medical evidence is inconsistent with Plaintiff’s knee, back, hand, and mental complaints; (2)
4 Plaintiff’s inaccurate statements regarding substance use undermines the reliability of her self-
5 reporting; and (3) the record reflects an impact from non-impairment situational stressors (such
6 as grief due to death of family members, financial worries, transportation problems, the relapse
7 of a roommate, and homelessness). AR at 718-23. Plaintiff disputes the ALJ’s reasoning with
8 respect to the medical record, arguing that the ALJ erred in finding that her testimony was
9 undermined by her lack of treatment for her back and hands, her improvement with injections,
10 her “fairly benign exam findings,” and her purportedly inaccurate reports of a potential need for
11 surgery.

12 *1. Legal Standards*

13 It is the province of the ALJ to determine what weight should be afforded to a claimant’s
14 testimony, and this determination will not be disturbed unless it is not supported by substantial
15 evidence. A determination of whether to accept a claimant’s subjective symptom testimony
16 requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen v. Chater*, 80 F.3d 1273,
17 1281 (9th Cir. 1996). First, the ALJ must determine whether there is a medically determinable
18 impairment that reasonably could be expected to cause the claimant’s symptoms. 20 C.F.R.
19 §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical
20 evidence of an underlying impairment, the ALJ may not discredit the claimant’s testimony as to
21 the severity of symptoms solely because they are unsupported by objective medical evidence.
22 *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v. Chater*, 157 F.3d
23 715, 722 (9th Cir. 1988). Absent affirmative evidence showing that the claimant is malingering,

1 the ALJ must provide “clear and convincing” reasons for rejecting the claimant’s testimony.
2 *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing *Molina*, 674 F.3d at 1112). *See*
3 *also Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).

4 When evaluating a claimant’s subjective symptom testimony, the ALJ must specifically
5 identify what testimony is not credible and what evidence undermines the claimant’s complaints;
6 general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ
7 may consider “ordinary techniques of credibility evaluation,” including a claimant’s reputation
8 for truthfulness, inconsistencies in testimony or between testimony and conduct, daily activities,
9 work record, and testimony from physicians and third parties concerning the nature, severity, and
10 effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-59 (citing *Light v. Social Sec. Admin.*,
11 119 F.3d 789, 792 (9th Cir. 1997)).

12 2. *Lack of Treatment*

13 Plaintiff argues that the ALJ erred in finding that her lack of recent treatment undermined
14 her allegations, because she explained at the hearing that she was unable to pursue treatment
15 during the time that she was homeless, and the ALJ “improperly failed to consider” this
16 explanation. (Dkt. # 14 at 17.) But Plaintiff is mistaken: the ALJ addressed that testimony,
17 explained that “homelessness is not a basis for a finding of disability[,]” and found that the
18 evidence shows that when Plaintiff is receiving treatment, she can perform light work consistent
19 with the ALJ’s RFC assessment. AR at 722-23.

20 The ALJ therefore did not fail to consider Plaintiff’s explanation for a lack of treatment,
21 but instead found that when Plaintiff did present for treatment, some of her symptoms improved.
22 *Id.* at 718-23. The ALJ did not err in assessing Plaintiff’s RFC assuming treatment, because
23 treatable impairments cannot be disabling and an RFC represents the most a claimant can do. *See*

1 *Warre v. Comm’r of Social Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); 20 C.F.R. §§
2 404.1545(a)(1), 416.945(a)(1) (RFC “is the most you can still do despite your limitations.”).

3 The ALJ also noted that even when Plaintiff did have stable housing, she nonetheless
4 failed to attend multiple mental health appointments. AR at 723 (citing *id.* at 363-493). Plaintiff
5 has not shown that the ALJ erred in considering her lack of treatment during some parts of the
6 adjudicated period.

7 3. *Improvement With Treatment*

8 Plaintiff argues that the ALJ erred in focusing on her improvement with treatment,
9 namely epidural steroid injections for her back pain. (Dkt. # 14 at 17.) Plaintiff argues that even
10 though she did experience improvement with injections, her pain was exacerbated when she was
11 working part-time in 2016, as she testified at the hearing. (*Id.* (citing AR at 768-69).) The
12 hearing testimony cited by Plaintiff indicates that when she was working part-time in 2016, her
13 knee and hand complaints prevented her from working, rather than back pain. AR at 769.
14 Plaintiff has therefore not identified any part of the record that undermines the ALJ’s finding that
15 injections were effective in resolving Plaintiff’s back pain.

16 4. *“Fairly benign exam findings”*

17 Plaintiff disputes the ALJ’s characterization of the record as containing “fairly benign
18 exam findings,” pointing to MRI results, radicular symptoms, and positive straight leg raise tests.
19 (Dkt. # 14 at 18 (citing AR at 1209).) It is not clear why the MRI results cited by Plaintiff (AR at
20 1209) necessarily undermine the ALJ’s interpretation of the record: the MRI results describe
21 mild and moderate findings, and after reviewing those results, the doctor recommended
22 injections. *Id.* at 1203-04. Plaintiff has not pointed to evidence contradicting the ALJ’s
23 interpretation of the record.

1 5. *Need for Surgery*

2 The ALJ noted that Plaintiff “testified that she had been told she would need surgery if
3 the injections were ineffective,” but the ALJ found that “there is no mention of surgery in any of
4 the orthopedic clinical notes.” *Id.* at 720. As noted in Plaintiff’s brief, one of the clinical notes
5 does corroborate Plaintiff’s hearing testimony. (Dkt. # 14 at 18 (citing AR at 1204).) That one
6 note in a record more than 2,200 pages long contradicts the ALJ’s finding amounts to harmless
7 error, given the other valid reasons — some of which are unchallenged by Plaintiff — the ALJ
8 provided for discounting Plaintiff’s testimony. *See Carmickle v. Comm’r of Social Sec. Admin.*,
9 533 F.3d 1155, 1162-63 (9th Cir. 2008).

10 **C. The ALJ Did Not Err in Assessing Medical Opinions**

11 Plaintiff challenges the ALJ’s assessment of many medical opinions, and the Court will
12 address the sufficiency of the ALJ’s reasoning as to each disputed opinion in turn. For the
13 following reasons, the Court affirms the ALJ’s assessment of the disputed opinions.

14 1. *Legal Standards*

15 As a matter of law, more weight is given to a treating physician’s opinion than to that of a
16 non-treating physician because a treating physician “is employed to cure and has a greater
17 opportunity to know and observe the patient as an individual.” *Magallanes*, 881 F.2d at 751; *see*
18 *also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). A treating physician’s opinion, however,
19 is not necessarily conclusive as to either a physical condition or the ultimate issue of disability,
20 and can be rejected, whether or not that opinion is contradicted. *Magallanes*, 881 F.2d at 751. If
21 an ALJ rejects the opinion of a treating or examining physician, the ALJ must give clear and
22 convincing reasons for doing so if the opinion is not contradicted by other evidence, and specific
23 and legitimate reasons if it is. *Reddick*, 157 F.3d at 725. “This can be done by setting out a

1 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
2 interpretation thereof, and making findings.” *Id.* (citing *Magallanes*, 881 F.2d at 751). The ALJ
3 must do more than merely state his/her conclusions. “He must set forth his own interpretations
4 and explain why they, rather than the doctors’, are correct.” *Id.* (citing *Embrey v. Bowen*, 849
5 F.2d 418, 421-22 (9th Cir. 1988)). Such conclusions must at all times be supported by substantial
6 evidence. *Reddick*, 157 F.3d at 725.

7 The opinions of examining physicians are to be given more weight than non-examining
8 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Like treating physicians, the
9 uncontradicted opinions of examining physicians may not be rejected without clear and
10 convincing evidence. *Id.* An ALJ may reject the controverted opinions of an examining
11 physician only by providing specific and legitimate reasons that are supported by the record.
12 *Bayliss*, 427 F.3d at 1216.

13 Opinions from non-examining medical sources are to be given less weight than treating
14 or examining doctors. *Lester*, 81 F.3d at 831. However, an ALJ must always evaluate the
15 opinions from such sources and may not simply ignore them. In other words, an ALJ must
16 evaluate the opinion of a non-examining source and explain the weight given to it. Social
17 Security Ruling (“SSR”) 96-6p, 1996 WL 374180, at *2. Although an ALJ generally gives more
18 weight to an examining doctor’s opinion than to a non-examining doctor’s opinion, a non-
19 examining doctor’s opinion may nonetheless constitute substantial evidence if it is consistent
20 with other independent evidence in the record. *Thomas*, 278 F.3d at 957; *Orn*, 495 F.3d at 632-
21 33.

22 2. *Alnoor Virji, M.D.; Arthur Lorber, M.D.; and Donald G. Hill, M.D.*

23 The ALJ gave significant weight to the opinions of Drs. Virji, Lorber, and Hill. AR at

1 723. Dr. Virji reviewed Plaintiff's records in December 2011, and opined that Plaintiff could
2 perform light work with some additional limitations, including postural and environmental
3 restrictions. Supp. AR at 109-11. The ALJ acknowledged that Dr. Virji's opinion was "rendered
4 some time ago," but found that nonetheless the opinion is the "most accurate characterization of
5 the most the claimant can do." AR at 723. The ALJ also found that Dr. Virji's conclusions were
6 mostly consistent with Dr. Lorber's 2010 testimony (*id.* at 43-51) (and to the extent Dr. Lorber's
7 testimony deviated from those conclusions, the ALJ found the testimony not persuasive) and Dr.
8 Hill's 2008³ opinion (Supp. AR at 781-84).

9 Plaintiff argues that the ALJ erred in relying on opinions from 2008, 2010, and 2011 in
10 assessing her RFC in 2018 because her condition deteriorated after that time, specifically with
11 respect to her hands and the progression of her degenerative disc disease. (Dkt. # 14 at 11.)
12 Plaintiff does not point to any recent opinion that documents a decline in functionality, however,
13 and does not argue that the ALJ overlooked any treatment notes during a more recent time
14 period. The ALJ's decision contains a thorough discussion of the entire treatment record, and the
15 ALJ had the opportunity to consider whether the opinions of Drs. Virji, Lorber, and Hill were
16 consistent with the longitudinal record. AR at 718-21. The ALJ specifically discussed Plaintiff's
17 allegations of hand limitations and back pain, and explained why she found Plaintiff's allegations
18 to be inconsistent with the entirety of the record. The age of the opinions of Drs. Virji, Lorber,
19 and Hill is not dispositive, because the ALJ found that those opinions nonetheless accurately
20 reflected Plaintiff's RFC and Plaintiff has not pointed to specific credible evidence showing
21 otherwise. Citing various clinical findings does not show that Plaintiff is less functional than the
22

23 ³ The ALJ referred to Dr. Hill's opinion as an "April 2017" opinion, but it was actually
written April 17, 2008. AR at 723, Supp. AR at 781-84. This scrivener's error did not affect the
ALJ's ultimate disability determination and is therefore harmless.

1 ALJ found her to be, and therefore Plaintiff has not met her burden to show error in the ALJ's
2 assessment of the opinions of Drs. Virji, Lorber, and Hill.

3 3. *Janelle Walhout, M.D.*

4 Dr. Walhout, Plaintiff's treating primary care provider, completed a form DSHS opinion
5 in May 2011, describing physical limitations that she believed would persist for six months.
6 Supp. AR at 330-31. Specifically, Dr. Walhout opined that Plaintiff could stand for two hours
7 and sit for four hours in an eight-hour workday. *Id.* at 330.

8 The ALJ noted that Dr. Walhout's opinion was limited in temporal scope, thus failing to
9 satisfy the Social Security Act's twelve-month durational requirement. *See* 42 U.S.C. § 423
10 (d)(1)(A) (disability means "inability to engage in any substantial gainful activity by reason of
11 any medically determinable physical or mental impairment . . . which has lasted or can be
12 expected to last for a continuous period of not less than 12 months"); 20 C.F.R. §§ 404.1505,
13 1509 (to meet definition of disability, claimant must have a severe impairment preventing work;
14 impairment must have lasted or be expected to last at least twelve months). This is a specific,
15 legitimate reason to discount Dr. Walhout's opinion, because it is less probative to the ALJ's
16 inquiry given its limited scope. *See, e.g., Hall v. Colvin*, 2014 WL 1285914, at *3-4 (E.D. Wash.
17 Mar. 31, 2014); *Bales v. Astrue*, 2011 WL 923571, at *13 (E.D. Cal. Mar. 14, 2011).

18 The ALJ also noted that Dr. Walhout referred Plaintiff to vocational counseling and
19 preemployment activities, which the ALJ found to be inconsistent "with a conclusion that [she]
20 was incapable of standing, walking, and/or sitting through a full workday." AR at 723 (citing
21 Supp. AR at 331). Plaintiff argues that these are not actually inconsistent, because Dr. Walhout
22 may have intended that Plaintiff could work part-time. (Dkt. # 14 at 11.) Plaintiff has not shown
23 that the ALJ's interpretation of Dr. Walhout's opinion is unreasonable, and therefore has not

1 established error in the ALJ's decision simply by positing an arguably reasonable interpretation
2 of her own. *See Morgan*, 169 F.3d at 599. The ALJ's interpretation is particularly reasonable in
3 light of Dr. Walhout's contemporaneous treatment note, which indicates that Plaintiff "[m]ay not
4 be appropriate for heavy labor, but there are many jobs she can do." Supp. AR at 339. It is not
5 unreasonable to assume Dr. Walhout was referring to full-time jobs in that note, and to find that
6 to be inconsistent with Dr. Walhout's opinion. *See Bayliss*, 427 F.3d at 1216 (holding that an
7 ALJ's rejecting a physician's opinion due to discrepancy or contradiction between opinion and
8 the physician's own notes or observations is "a permissible determination within the ALJ's
9 province").

10 Accordingly, the Court finds that the ALJ discounted Dr. Walhout's opinion for legally
11 sufficient reasons.

12 4. *Caryn Jackson, M.D.*

13 Dr. Jackson, Plaintiff's treating provider, completed a DSHS form opinion in October
14 2012, describing Plaintiff's moderate radiculopathy and scoliosis, and opining that these
15 conditions limited Plaintiff to sedentary work. AR at 1147-51. The ALJ discounted Dr. Jackson's
16 opinion, finding it inconsistent with her contemporaneous range-of motion testing and
17 appointment notes, as well as Plaintiff's subsequent improvement with injections. *Id.* at 724.

18 Plaintiff argues that the ALJ erred in finding Dr. Jackson's conclusions to be inconsistent
19 with her testing and notes, because the ALJ is a layperson. (Dkt. # 14 at 13-14.) ALJs are indeed
20 not medically trained, but case law and the Commissioner's internal rulings affirm an ALJ's
21 ability to consider whether opinions are consistent with the record. *See Bayliss*, F.3d at 1216;
22 SSR 96-5p, 1996 WL 374183, at *3 (Jul. 2, 1996).

1 Moreover, the ALJ also discounted Dr. Jackson’s opinion because it was inconsistent
2 with Plaintiff’s subsequent improvement with treatment, namely an injection that eliminated
3 Plaintiff’s back pain for “well over a year.” AR at 724. Plaintiff argues that in describing her
4 subsequent improvement, the ALJ failed to account for the fact that Plaintiff’s physical
5 limitations prevented her from maintaining a job in 2016. (Dkt. # 14 at 13.) But at the time
6 Plaintiff was working in 2016, she had not received an injection since sometime in 2015, and she
7 testified that she could not continue working at that job due to knee and hand (not back) pain.
8 *See* AR at 769, 776. The ALJ did not err in discounting Dr. Jackson’s opinion because it failed to
9 describe Plaintiff’s long-term functioning with treatment.

10 Accordingly, the Court finds that the ALJ discounted Dr. Jackson’s opinion for legally
11 sufficient reasons.

12 5. *Steven Haney, M.D.*

13 In Plaintiff’s opening brief, she alleged that the ALJ failed to address Dr. Haney’s May
14 2011 opinion. (Dkt. # 14 at 15-16.) The Commissioner pointed out that the ALJ did discuss Dr.
15 Haney’s opinion. (Dkt. # 26 at 11-12 (citing AR at 724).) In Plaintiff’s reply brief, she appears to
16 abandon her assignment of error with respect to Dr. Haney’s opinion. (Dkt. # 27 at 3 (failing to
17 list Dr. Haney’s opinion among the opinions challenged).) The Court need not address Dr.
18 Haney’s opinion further.

19 6. *Roland Dougherty, Ph.D.*

20 Dr. Dougherty performed a psychological evaluation of Plaintiff in May 2014, and wrote
21 a narrative report and completed a checkbox form. AR at 528-50. Notably, Dr. Dougherty found
22 that Plaintiff put forth poor effort on memory testing, but he thought “it is likely that she does
23 have some memory difficulties.” *Id.* at 539. He also noted that she exhibited significant

1 obsessive-compulsive disorder symptoms during his evaluation, yet she “appears to have denied
2 such symptoms in the past.” *Id.*

3 The ALJ summarized all of Dr. Dougherty’s findings and assigned “minimal weight” to
4 his opinion for several reasons. *Id.* at 725. First, the ALJ noted that Dr. Dougherty did not
5 explain how he accounted for Plaintiff’s poor effort on memory testing; Dr. Dougherty indicated
6 that Plaintiff had moderate limitations in her ability to understand, remember, and carry out
7 complex instructions, but cited as support test results that he elsewhere indicated were
8 inaccurate. *See id.* at 528, 537, 539. This is a specific, legitimate reason to discount Dr.
9 Dougherty’s opinion. *See Thomas*, 278 F.3d at 958 (affirming an ALJ’s discounting of an
10 opinion based on inaccurate testing).

11 The ALJ also discounted Dr. Dougherty’s opinion to the extent that he posited Plaintiff
12 would have attendance problems and social deficits due to her alleged chronic pain, depression
13 and anxiety, because those allegations were inconsistent with the record. AR at 725. Plaintiff
14 argues that the ALJ erred in failing to identify specific inconsistencies, but the ALJ referred to
15 her more detailed discussion of the treatment history in other parts of the decision as well as
16 identifying certain specific inconsistencies, and an ALJ does not err in organizing a decision in
17 this fashion. *Id.* Earlier in the decision, the ALJ highlighted Plaintiff’s improvement with
18 injections, and how her depression and anxiety symptoms were also amenable to treatment. *Id.* at
19 720-22. The ALJ also stated that the record revealed that Plaintiff’s attendance problems were
20 based on issues related to her homelessness and lack of transportation, rather than her
21 impairments. *Id.* at 725. Furthermore, the ALJ noted that shortly after Dr. Dougherty’s
22 evaluation, Plaintiff began working part-time and did not report experiencing any of the social
23 problems Dr. Dougherty had indicated. *Id.* These aspects of the record are inconsistent with Dr.

1 Dougherty's conclusions regarding the impact of Plaintiff's pain, depression, and anxiety, and
2 that inconsistency is a specific, legitimate reason to discount Dr. Dougherty's opinion. *See*
3 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion
4 presenting inconsistencies between the opinion and the medical record).

5 Accordingly, the Court finds that the ALJ discounted Dr. Dougherty's opinion for legally
6 sufficient reasons.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
9 case is **DISMISSED** with prejudice.

10 Dated this 17th day of April, 2019.

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13 MICHELLE L. PETERSON
14 United States Magistrate Judge
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